IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3747 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G S R T C - Petitioner(s)
Versus
STATE TRANSPORT WORKERS UNION & 1 - Respondent(s)

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Appearance :
MR HARDIK C RAWAL for Petitioner(s) : 1,
DS AFF.NOT FILED (R) for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 12/06/2006

ORAL JUDGMENT

Heard learned advocate Mr.Hardik Raval for petitioner. In this petition, petitioner has challenged the award made by the industrial tribunal, Ahmedabad in Reference (IT) No. 17 of 1988 dated 19th June, 1990

wherein the industrial tribunal has set aside the punishment of stoppage of two increments with cumulative effect and directed petitioner corporation to pay the difference of salary within two months. Initially, this court issued rule and notice as to interim relief returnable on 8.7.1991, by order dated 10.6.1991. Thereafter, on 1.4.1992, this court passed following order:

" Though served, no one appears on behalf of the respondents. In the facts of the case, interim relief in terms of para 8(b)."

As the petitioner was not able to serve respondent, a last chance was given by this court by order dated 29.3.2006. On 29.3.2006, this court ordered to issue fresh rule returnable on 19th April, 2006 and direct service was permitted. Office note shows that the packet of direct service was not collected by petitioner from the department. Said office note is dated 28.4.2006. Thus, no efforts have been made by petitioner to serve respondent. In view of these facts, considering the fact that it is a matter of the year 1991, it has been taken up for final hearing in absence of the respondent workman. Workman concerned was working as a driver in Palanpur Depot. On 16.8.1982, concerned workman Shri

Mandori was allotted duty of driver on the route from Palanpur to Patosan. While he was coming from Patosan to Palanpur, at that time, near Karnavat High School, Gobri Road, there was accident of one tractor and his bus. In connection with the said accident, he was served with the charge sheet. Thereafter, departmental inquiry was initiated against workman and after completion of inquiry, competent authority imposed punishment by order dated 18.6.1983 wherein punishment of stoppage of three increments with cumulative effect was imposed. Against that order, first appeal filed by petitioner was rejected. Thereafter, workman filed second appeal wherein, by order dated 17.1.1985, said punishment was reduced from three years to two years. Respondent raised industrial dispute against the said punishment order dated 17.1.1985. Said dispute was referred to for adjudication to the industrial tribunal. Before the industrial tribunal, workman filed statement of claim and corporation filed reply at Exh.10. Thereafter, petitioner has produced documentary evidence before the tribunal. A contention was raised by the workman that the departmental inquiry is vitiated but subsequently, by filing purshis at Exh.12, workman admitted legality, validity and propriety of the departmental inquiry and

because of the said purshis filed by workman at Exh.12, the tribunal has not examined the legality and validity of the departmental inquiry.

Thereafter, industrial tribunal examined merits of the matter. Tribunal considered, whether, on the basis of the record of inquiry, charge levelled against workman is found to be proved or not and whether there is any satisfactory evidence against workman about his negligence and carelessness in driving. In para 7 of the award, this aspect has been examined by the tribunal in detail and ultimately, tribunal came to the conclusion that no eye witness was examined in departmental inquiry. Charge sheet was served on the basis of police papers. Reporter, who was not an eye witness, was examined in departmental inquiry. In absence of any proper evidence, it is very difficult to decide whether the workman was negligent in driving vehicle or not. Tribunal has considered accident report filed by reporter. In item 4 thereof, how the accident has taken place, that has been narrated by the reporter. Looking to the report, tractor bearing Registration NO. GJE 6298 dashed with the ST Bus from the opposite side. Further, report states that if the driver would have taken more care, then, accident

could have been avoided but there was no evidence in departmental inquiry whether, in fact care has been taken by the driver or not. Tribunal came to the conclusion that the finding of inquiry officer are based on assumption and there is no direct evidence proving charge levelled against workman, therefore, in absence of proper evidence or direct evidence to prove charge against workman, tribunal set aside the order of punishment

I have perused the award made by tribunal. I have also considered the submissions made by the learned advocate Mr. Raval for petitioner corporation. It is required to be noted that the driver was acquitted by the competent criminal court. Departmental inquiry is quasi criminal proceedings, therefore, some direct proper evidence to establish charge against workman is necessary in departmental inquiry. In absence of such direct evidence, for want of such direct evidence, tribunal set aside the order of punishment and ordered for payment of the amount of difference accordingly. In passing such award, no error has been committed by the tribunal. Tribunal has given reasoning in support of its conclusion. Learned advocate Mr. Raval has not been able

to point out any infirmity in the award. He has also not been able to point out that the tribunal has committed any jurisdictional error. Therefore, considering the entire reasoning given by the tribunal, according to my opinion, the industrial tribunal has not committed any error which would require any interference with the award while exercising powers under Article 227 of the Constitution of India. Hence, there is no substance in this petition. Accordingly, present petition is dismissed. Rule is discharged. Interim relief, if any, shall stand vacated. No order as to costs.

(H.K. Rathod,J.)

Vyas